

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PAMELA D. MCNEIL and JAMES K
CANTWILL, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

IKO MANUFACTURING, IKO
INDUSTRIES, LTD., IKO SALES, LTD.,
IKO PACIFIC, INC., and IKO CHICAGO,
INC.,

Defendants.

Case No. 09-cv-04443

**JOINT MOTION TO STAY PROCEEDINGS PENDING DECISION
BY THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Plaintiffs Pamela D. McNeil and James K. Cantwill (collectively, “Plaintiffs”) and Defendants IKO Manufacturing, Inc., IKO Pacific, Inc. and IKO Chicago Inc. (collectively, the “Moving Defendants,” and together with Plaintiffs, the “Moving Parties”), jointly move this Court to stay all proceedings in this action pending a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) on the Moving Defendants’ pending motion to transfer this and three other putative class actions for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407 (“MDL Motion”). In support of this motion, the Moving Parties submit a supporting legal memorandum, and further state as follows:

1. This case is one of four putative class actions currently pending in four federal district courts in New York, Illinois, New Jersey, and Washington:

A. *Czuba v. IKO Manufacturing, Inc.*, Case No. 1:09-cv-00409-WMS
(Western District of New York)

- B. *McNeil v. IKO Manufacturing, Inc.*, Case No. 1:09-cv-04443
(Northern District of Illinois)
- C. *Zanetti v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-02017-DRD-MAS
(District of New Jersey)
- D. *Hight v. IKO Manufacturing, Inc.*, Case No. 2:09-cv-00887-RSM
(Western District of Washington)

2. The plaintiffs in these actions allege that roofing shingles manufactured by the Moving Defendants and installed on homes purchased by the plaintiffs failed prematurely. Collectively, these four actions are referred to as the “IKO Roofing Shingle Actions.”

3. On August 6, 2009, the Moving Defendants submitted for filing with the JPML their MDL Motion seeking to transfer the IKO Roofing Shingle Actions for coordinated or consolidated pretrial proceedings. On August 27, 2009, Plaintiffs responded to the MDL Motion, and joined in the request for transfer of the IKO Roofing Shingle Actions. The Moving Parties therefore agree that the IKO Roofing Shingle Actions should be transferred.

4. The Moving Parties respectfully request the entry of a stay of pretrial proceedings in this action pending a decision by the JPML on the MDL Motion. The plaintiffs and the Moving Defendants are contemporaneously filing similar motions for a stay in the other three IKO Roofing Shingle Actions.

5. Courts routinely exercise the inherent authority to stay pretrial proceedings during the pendency of a motion to transfer pretrial proceedings pursuant to 28 U.S.C. § 1407. Indeed, courts routinely stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel to conserve judicial resources. *See Paul v. Aviva Life and Annuity Co.*, No. 09-1038, 2009 U.S. Dist. LEXIS 64420, at *2-3 (N.D. Ill. July 27, 2009). That is because interim stays: (1) promote judicial economy; and (2) avoid inconsistent results among district judges in different district courts. *Bd. of Trs. For the Teachers' Ret. Sys. of the State of*

Ill. v. WorldCom, Inc., 244 F. Supp. 2d 900, 905-06 (N.D. Ill. 2002) (finding that “the interests of judicial economy and the threat of inconsistent rulings” favor a stay of all pretrial proceedings pending the JPML’s transfer decision).

6. As explained in greater detail in the supporting memorandum, a stay here will serve both such goals. First, the requested stay will conserve the resources of this Court and promote judicial economy. Second, temporarily staying proceedings in this action will eliminate the risk that inconsistent decisions would be reached simultaneously by different district judges on common legal and factual pretrial issues in the IKO Roofing Shingle Actions, including regarding a motion to dismiss or a motion for class certification.

7. In addition, the Moving Parties agree that staying this proceeding for a short amount of time will not unfairly prejudice any of the parties to this litigation because it is still in the early stages. A complaint has been filed, but no responsive pleading has been filed and no discovery has been taken. Indeed, this Court has already entered an order staying the time for IKO Manufacturing, Inc., IKO Pacific, Inc. and IKO Chicago, Inc. to answer or otherwise plead until the JPML rules on the MDL Motion. [Dkt. # 21].¹

8. Staying these proceedings will also serve as a courtesy to the judges on the JPML because it will allow them a reasonable amount of time to rule on the MDL Motion.

WHEREFORE, for the reasons set forth above, and for the additional reasons set forth in the accompanying memorandum of law, Plaintiffs and the Moving Defendants jointly request that the Court stay all pretrial proceedings pending the JPML’s decision on the MDL Motion.

¹ The courts in *Zanetti* (D.N.J.), and *Hight* (W.D. Wash.) have likewise entered orders staying the time for Moving Defendants to answer or otherwise plead until the JPML rules on the MDL Motion.

Dated: September 22, 2009

Jointly and respectfully submitted,

**PAMELA D. MCNEIL and
JAMES K CANTWILL,**

**IKO MANUFACTURING INC.,
IKO PACIFIC, INC,
IKO CHICAGO INC.,**

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By: /s/ Christopher M. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September, 2009, I served a copy of the foregoing document to all counsel of record via the ECF/CM document filing system.

/s/ Christopher M. Murphy